

AGENDA ITEM #17

**Information Item: Performance of Natural Resources Commission's Division of Hearings and application of metrics;
Administrative Cause No. 10-078A**

METRICS REVIEW CALENDAR YEARS 2008 & 2009

Measuring Performance in Support of Indiana Economic Development				
Request small business impact information on rules 3 days after filing with the publisher and semi-annual		100%	90% - 99%	90% or less
	2008	Semi-Annual Notice (17 of 17)	3-Day Notice (11 of 13)	
	2009	Semi-Annual Notice (37 of 37)	3-Day Notice (13 of 14)	
Previous reporting period for comparison purposes	2006	16		
	2007	16		
Electronic draft of annual report of comments, questions & concerns prepared		September 15	October 15	November 1
	2008	September 9, 2008		
	2009			October 20, 2009
Previous reporting period for comparison purposes	2006	September 1, 2006		
	2007	August 31, 2007		
Measuring Performance in Customer Interactions: Information & Education				
Participation in educational programs		Over 95%	90% - 95%	Less than 90%
	2008	3 requests/3 completed		
	2009	4 requests/4 completed		
Previous reporting period for comparison purposes	2006	2 requests/2 completed		
	2007	3 requests/3 completed		

Event posting to web-based calendar¹		1 -3 days	3 -5 days	Over 5 days
	2008			
	2009			
Previous reporting period for comparison purposes	2006			
	2007			
NRC/AOPA Committee minutes preparation		20 days	21 – 39 days	40 days or more
	2008	NRC: 3 AOPA: 2 (of 5)²	NRC: 3	
	2009	NRC: 3	NRC: 3 AOPA: 2 (of 2)	
Previous reporting period for comparison purposes ³	2006	2		
	2007	5	1	
Measuring Performance in Customer Interactions: Rule Promulgations				
Attending rules workgroup meetings		91% - 100%	81% - 90%	Less than 81%
	2008	21 (of 22)		
	2009	22 (of 22)		
Previous reporting period for comparison purposes	2006		11 (of 13)	
	2007	16 (of 16)		
Reviewing submitted draft rules⁴		10 days	11 – 20 days	Over 20 days
	2008	5		
	2009	5	1	3
Previous reporting period for comparison purposes	2006	7	1	1
	2007	3		1

¹ It is recommended that this metric be eliminated because there is no accurate method to confirm the Division's compliance/non-compliance with this measurement. It is the routine practice of all Division staff members to post events to the web-based calendar contemporaneous with the scheduling of the event; however, there is no means by which to record that the action actually occurred or on what date it occurred.

² Records cannot be located from which to ascertain when the draft minutes for three of the meetings were ready for review.

³ The meetings reported for 2006 and 2007 are only the NRC meetings. The Division realized while collecting data for that report that there was no record being kept regarding the date that NRC or AOPA Committee Meetings minutes were completed. Data was located with respect to 2 NRC meetings occurring in 2006 and for all 6 NRC meetings occurring in 2007. However, this data has not been located with respect to AOPA Committee Meeting minutes.

⁴ In addition to the numbers reported there were four rules in 2008 and two rules in 2009 that were drafted by Division staff. There were also five draft rules in each 2008 and 2009 that the review time cannot be determined from a review of the file. For these latter instances it is believed that because the Division and Department staff work very closely together in drafting some rule language the full genesis of the rule language is not contained within the Division's files. Division staff will take steps to correct this oversight in data collection for future reports.

Notice to DNR Divisions of expiring rules		12 months	9 – 11 months	Less than 9 months
	2008	5		1
	2009	6		
Previous reporting period for comparison purposes	2006	Not Applicable	Not Applicable	Not Applicable
	2007	2	2	
Measuring Performance in Customer Interactions: AOPA Proceedings				
Posting decisions to CADDNAR		10 days	11 – 20 days	Over 20 days
	2008	5	8⁵	
	2009	10	5⁶	6
Previous reporting period for comparison purposes	2006 ⁷	4		2
	2007	19		
Providing notice in AOPA proceedings involving DNR license determinations		100%	95% – 99%	Less than 95%
	2008	29		
	2009	20		
Previous reporting period for comparison purposes	2006	38		
	2007	34		
Measuring Performance in Business Practices: AOPA Proceedings				
Holding timely prehearing conferences		30 days	31 – 59 days	60 days or more
	2008	68	29⁸	2
	2009	59	18⁹	1
Previous reporting period for comparison purposes	2006	76	49	
	2007 ¹⁰	75	13	1
Timely Final/Nonfinal Order		60 days	61 – 89 days	90 days

⁵ These postings to CADDNAR were delayed by technological computer and software issues.

⁶ Three of these postings to CADDNAR were delayed by temporary staff shortages within the Division.

⁷ Data is not available for 14 CADDNAR postings. In creating the measures, Division staff did not immediately consider the method by which the necessary data would be collected. Data was available for years going forward from 2006.

⁸ For 24 of the total 31 cases that had prehearing conferences scheduled beyond 30 days in 2008 the prehearing conferences were held at remote locations and may have been involved in the clustering of cases to eliminate unnecessary travel expenses.

⁹ The prehearing conferences in 17 of the total 19 cases that were scheduled beyond 30 days in 2009 were held at remote locations. These may have been involved in clustering to eliminate unnecessary travel expenses.

¹⁰ The raw data disclosed 47 cases that were never scheduled for a prehearing conference. As authorized by the Administrative Orders and Procedures Act, these cases were dismissed for failure to state a claim before a prehearing conference was scheduled.

issuance	2008	12 (of 12)		
	2009	16 (of 18)		2 (of 18)
Previous reporting period for comparison purposes	2006	19		
	2007	15	4	
Measuring Performance in Business Practices: Conservancy Districts				
Appointment of hearing officer		1 – 3 days	4 – 7 days	Over 7 days
	2008	2	2	
	2009	3		
Previous reporting period for comparison purposes	2006	1		
	2007	3		
Referral of parties to Information Bulletin #36 ¹¹		14 days	15 – 21 days	Over 21 days
	2008	3	1	
	2009			1
Previous reporting period for comparison purposes	2006	1		
	2007	3		
Timely completion of hearing officer's report ¹²		30 – 45 days	46 – 59 days	60 days or more
	2008	3		
	2009			1
Previous reporting period for comparison purposes	2006	1		
	2007	3		
Measuring Performance in Business Practices: Rule Promulgations				
Tender for consideration of final adoption following OMB ¹³ approval		4 – 5 months	5 – 6 months	Over 6 months
	2008	13		
	2009	12	1	1

¹¹ There is a small number of attorneys who represent parties who are involved in the establishment of conservancy districts and those attorneys are by now all very familiar with Information Bulletin #36, which was originally adopted in 1996. Consequently, it has become unnecessary in most cases to refer the attorneys or parties to Information Bulletin #36. It is recommended that the metric be replaced with a new metric measuring the time between the Division's receipt of the referral and its issuance of letters soliciting input from state and local governmental agencies.

¹² Presently this metric is measured by calculating the number of days between the close of the public comment period and the hearing officer's completion of his/her report. However, the hearing officer cannot legitimately complete his/her report until the Department has had an opportunity to prepare its report and recommendation, which cannot occur until the Department is able to consider all received public comments. Therefore, it is being recommended that this metric be amended to measure the number of days between the Division's receipt of the Department's report and the hearing officer's completion of his/her report.

¹³ OMB = Office of Management and Budget

Previous reporting period for comparison purposes	2006	13	2	
	2007	5		
Return by Attorney General for correction following final adoption		0 returns	1% - 5% returns	Over 5% returns
	2008	X		
	2009	X		
Previous reporting period for comparison purposes	2006	X		
	2007	X		
Measuring Performance in Employee Development				
Division staff meetings		Quarterly	Semi-Annually	Less than Semi-Annual
	2008		X	
	2009		X	
Previous reporting period for comparison purposes	2006			X
	2007			X
Division retreat		Annual	Biennially	Less than Biennially
	2008	X		
	2009	X		
Previous reporting period for comparison purposes	2006		X	
	2007		X	
Software training		100%	99% - 75%	Less than 75%
	2008	X		
	2009	X		
Previous reporting period for comparison purposes	2006	X		
	2007	X		

Measuring Performance in Support of Indiana Economic Development: NRC: Hearings

<p>DIVISION MEASURES:</p> <ul style="list-style-type: none"> ◆ Facilitate Department and Commission Compliance with Economic Development Corporation Requirements for Rule Promulgation. <ul style="list-style-type: none"> – Maintain repository for comments, questions and complaints regarding a rule. <ul style="list-style-type: none"> ▪ 100% - 95% Request, within three (3) days of final rule publication filing the final rule with the publisher and not less than semi-annually, that SBRC submit all such information received to date. – Prepare an electronic draft of the annual report of comments, questions and concerns by September 15. (Exceed statutory requirement by 45 days) 	<p>DIVISION MEASURES:</p> <ul style="list-style-type: none"> ◆ Facilitate Department and Commission Compliance with Economic Development Corporation Requirements for Rule Promulgation. <ul style="list-style-type: none"> – Maintain repository for comments, questions and complaints regarding a rule. <ul style="list-style-type: none"> ▪ 95% to 90% Request, within three (3) days of final rule publication filing the final rule with the publisher and not less than semi-annually, that SBRC submit all such information received to date. – Prepare an electronic draft of the annual report of comments, questions and concerns by October 15. (Exceed statutory requirement by 15 days) 	<p>DIVISION MEASURES:</p> <ul style="list-style-type: none"> ◆ Facilitate Department and Commission Compliance with Economic Development Corporation Requirements for Rule Promulgation. <ul style="list-style-type: none"> – Maintain repository for comments, questions and complaints regarding a rule. <ul style="list-style-type: none"> ▪ 90% or less Request, within three (3) days of final rule publication filing the final rule with the publisher and not less than semi-annually, that SBRC submit all such information received to date. – Prepare an electronic draft of the annual report of comments, questions and concerns by November 1. (Meet statutory requirement)

Measuring Performance in Customer Interactions: NRC: Hearings

<p>DIVISION MEASURES: <u>Information and Education:</u></p> <ul style="list-style-type: none"> ◆ Participate in Educational Programs over 95% of times requested by citizens. ◆ Notice of public meetings, public hearings and AOPA proceedings are posted to the NRC web-based event calendar within one (1) to three (3) days of scheduling the event. 	<p>DIVISION MEASURES: <u>Information and Education:</u></p> <ul style="list-style-type: none"> ◆ Participate in Educational Programs 95% - 90% of times requested by citizens. ◆ Notice of public meetings, public hearings and AOPA proceedings are posted to the NRC web-based event calendar within three (3) to five (5) days of scheduling the event. 	<p>DIVISION MEASURES: <u>Information and Education:</u></p> <ul style="list-style-type: none"> ◆ Participate in Educational Programs less than 90% of times requested by citizens. ◆ Notice of public meetings, public hearings and AOPA proceedings are posted to the NRC web-based event calendar over five (5) days after scheduling the event.

<ul style="list-style-type: none"> ◆ Draft NRC and AOPA Committee Meeting minutes are prepared within twenty (20) days after meeting. <p><u>NRC Rule Promulgations:</u></p> <ul style="list-style-type: none"> ◆ Ensure Compliance with Rule Promulgation Processes <ul style="list-style-type: none"> – Attend Department division rule workgroup meetings 100% of times requested. – Review draft proposed rules and provide feedback regarding format and technical matter within ten (10) days of receipt. – Provide twelve (12) month advance notice to any Division having rules scheduled to sunset. <p><u>AOPA Proceedings:</u></p> <ul style="list-style-type: none"> ◆ Post AOPA final decisions of the NRC to CADDNAR within ten (10) days of issuance. ◆ For 100% of AOPA licensure proceedings, notice of the initial prehearing is provided to persons on the notice list provided by the DNR. <p><u>Other Ultimate Authority Boards:</u></p> <ul style="list-style-type: none"> ◆ Where requested by the Geologist Licensure Board or the Soil Scientist Registration Board, participate in public or private meetings 100% of the time. 	<ul style="list-style-type: none"> ◆ Draft NRC and AOPA Committee Meeting minutes are prepared within twenty-one (21) to thirty-nine (39) days after meeting. <p><u>NRC Rule Promulgations:</u></p> <ul style="list-style-type: none"> ◆ Ensure Compliance with Rule Promulgation Processes <ul style="list-style-type: none"> – Attend Department division rule workgroup meetings 99% - 95% of times requested. – Review draft proposed rules and provide feedback regarding format and technical matter within ten (10) to twenty (20) days of receipt. – Provide less than twelve (12) but at least nine (9) month advance notice to any Division having rules scheduled to sunset. <p><u>AOPA Proceedings:</u></p> <ul style="list-style-type: none"> ◆ Post AOPA final decisions of the NRC to CADDNAR within ten (10) to twenty (20) days of issuance. ◆ For 99% to 95% of AOPA licensure proceedings, notice of the initial prehearing is provided to persons on the notice list provided by the DNR. <p><u>Other Ultimate Authority Boards:</u></p> <ul style="list-style-type: none"> ◆ Where requested by the Geologist Licensure Board or the Soil Scientist Registration Board, participate in public or private meetings 99% - 90% of the time. 	<ul style="list-style-type: none"> ◆ Draft NRC and AOPA Committee Meeting minutes are prepared forty (40) days or more after meeting. <p><u>NRC Rule Promulgations:</u></p> <ul style="list-style-type: none"> ◆ Ensure Compliance with Rule Promulgation Processes <ul style="list-style-type: none"> – Attend Department division rule workgroup meetings less than 95% of times requested. – Review draft proposed rules and provide feedback regarding format and technical matter over twenty (20) days after receipt. – Provide nine (9) month or less advance notice to any Division having rules scheduled to sunset. <p><u>AOPA Proceedings:</u></p> <ul style="list-style-type: none"> ◆ Post AOPA final decisions of the NRC to CADDNAR over twenty (20) days after issuance. ◆ For less than 95% of AOPA licensure proceedings, notice of the initial prehearing is provided to persons on the notice list provided by the DNR. <p><u>Other Ultimate Authority Boards:</u></p> <ul style="list-style-type: none"> ◆ Where requested by the Geologist Licensure Board or the Soil Scientist Registration Board, participate in public or private meetings less than 90% of the time.
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Measuring Performance in Business Practices: NRC: Hearings

<p>DIVISION MEASURES: <u>AOPA Proceedings:</u></p> <ul style="list-style-type: none"> ◆ Unless otherwise requested by the claimant, the initial prehearing conference in an AOPA proceeding is scheduled to occur within thirty (30) days of receiving the complaint. ◆ Final (if ALJ is ultimate authority) or Non-Final Orders (if NRC is ultimate authority) in AOPA Proceedings will be issued within sixty (60) days after an administrative hearing. (Improves upon statutory directive by 30 days) <p><u>Conservancy Districts:</u></p> <ul style="list-style-type: none"> ◆ Facilitate compliance with statutory requirements involving conservancy districts. <ul style="list-style-type: none"> – A hearing officer is appointed within one (1) to three (3) days of receipt of the Circuit Court’s referral. – The Division refers parties to Information Bulletin #36 solicits input from state and local agencies within fourteen (14) days of receiving a completed referral package, including maps. – The hearing officer’s recommended factfinding report is prepared for submission to the Commission and distributed to the parties within thirty (30) to forty-five (45) days after the comment 	<p>DIVISION MEASURES: <u>AOPA Proceedings:</u></p> <ul style="list-style-type: none"> ◆ Unless otherwise requested by the claimant, the initial prehearing conference in an AOPA proceeding is scheduled to occur within thirty-one (31) to fifty-nine (59) days of receiving the complaint. ◆ Final (if ALJ is ultimate authority) or Non-Final Orders (if NRC is ultimate authority) in AOPA Proceedings will be issued within sixty-one (61) to eighty-nine (89) days after an administrative hearing. (Improves upon statutory directive by 10 days) <p><u>Conservancy Districts:</u></p> <ul style="list-style-type: none"> ◆ Facilitate compliance with statutory requirements involving conservancy districts. <ul style="list-style-type: none"> – A hearing officer is appointed within three (3) to seven (7) days of receipt of the Circuit Court’s referral. – The Division refers parties to Information Bulletin #36 solicits input from state and local agencies within fifteen (15) to twenty-one (21) days of receiving a completed referral package, including maps. – The hearing officer’s recommended factfinding report is prepared for 	<p>DIVISION MEASURES: <u>AOPA Proceedings:</u></p> <ul style="list-style-type: none"> ◆ Unless otherwise requested by the claimant, the initial prehearing conference in an AOPA proceeding is scheduled to occur sixty (60) days or more after receiving the complaint. ◆ Final (if ALJ is ultimate authority) or Non-Final Orders (if NRC is ultimate authority) in AOPA Proceedings will be issued ninety (90) days or more after an administrative hearing. (Meets statutory directive) <p><u>Conservancy Districts:</u></p> <ul style="list-style-type: none"> ◆ Facilitate compliance with statutory requirements involving conservancy districts. <ul style="list-style-type: none"> - A hearing officer is appointed over seven (7) days after receipt of the Circuit Court’s referral. - The Division refers parties to Information Bulletin #36 solicits input from state and local agencies over twenty-one (21) days after receiving a completed referral package, including maps. - The hearing officer’s recommended factfinding report is prepared for submission to the Commission and distributed to the parties sixty (60) days or

<p>period is closed DNR's Report is received.</p> <p><u>NRC Rule Promulgations:</u></p> <ul style="list-style-type: none"> ◆ Unless deferred at DNR's request, tender rule report on final adoption to the NRC within four (4) to five (5) months of receiving approval from Office of Management and Budget. ◆ During NRC rule promulgation process documents submitted to the attorney general result in zero submittals being returned for technical, formatting or grammatical correction. 	<p>submission to the Commission and distributed to the parties within forty-six (46) to fifty-nine (59) days after the comment period is closed DNR's Report is received.</p> <p><u>NRC Rule Promulgations:</u></p> <ul style="list-style-type: none"> ◆ Unless deferred at DNR's request, tender rule report on final adoption to the NRC within five (5) to six (6) months of receiving approval from Office of Management and Budget. ◆ During NRC rule promulgation process documents submitted to the attorney general result in one percent (1%) to five percent (5%) of submittals being returned for technical, formatting or grammatical correction. 	<p>more after the comment period is closed DNR's Report is received.</p> <p><u>NRC Rule Promulgations:</u></p> <ul style="list-style-type: none"> ◆ Unless deferred at DNR's request, tender rule report on final adoption to the NRC over six (6) months after receiving approval from Office of Management and Budget. ◆ During NRC rule promulgation process documents submitted to the attorney general result in five percent (5%) to ten percent (10%) of submittals being returned for technical, formatting or grammatical correction.
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Measuring Performance in Employee Development: NRC: Hearings

<p>DIVISION MEASURES:</p> <ul style="list-style-type: none"> ◆ Conduct quarterly open-forum staff meetings to facilitate information sharing, division wide knowledge of upcoming events, express concerns, etc. ◆ Hold a division retreat annually. ◆ Subject to funding availability, 100% personnel training for updated software 	<p>DIVISION MEASURES:</p> <ul style="list-style-type: none"> ◆ Conduct semi-annual open-forum staff meetings to facilitate information sharing, division wide knowledge of upcoming events, express concerns, etc. ◆ Hold a division retreat biennially. ◆ Subject to funding availability, 99% - 75% personnel training for updated software 	<p>DIVISION MEASURES:</p> <ul style="list-style-type: none"> ◆ Conduct no informal staff meetings. ◆ Failure to hold a division retreat at least biennially. ◆ Subject to funding availability, less than 75% personnel training for updated software